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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/823,456

04/12/2004

Patrice Nazzaro

S63.2B-14416-US01

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

03/09/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/823,456	<b>Applicant(s)</b> NAZZARO, PATRICE	
	<b>Examiner</b> Brian E. Pellegrino	<b>Art Unit</b> 3738	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): of claims 79,91.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: 79 and 91.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-6,9-12,15,16,18-21,24-26,30-35,38-41,47-55,59-64,82,85 and 88.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Brian E Pellegrino/  
 Primary Examiner, Art Unit 3738

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the proposed modification cannot be assumed to result in the same properties as the woven graft disclosed by Nunez. However, the Examiner has failed to see where such alleged assertions have been factually shown (whether it be in the specification or drawings or affidavit) that some "unexpected results" are achieved by the proposed modification the Examiner presented in the office action. The Examiner is not convinced that such a modification to the Nunez number of warp yarns would necessarily have changed the properties because a woven material can possess the same properties but be woven differently by using different diameter yarns to result in the same properties. Additionally, Applicant has not even stated what properties are even being asserted to allegedly be "affected" by modifying Nunez.

Regarding Applicant's comments about the drawings, it is noted that the prior art teachings disclosing the crimping of a vascular graft was never challenged in past office actions to be non-obvious or non-anticipatory and in the last response Applicant chose to establish some criticality to such a feature, but failed to state where such a critical feature is described in the written disclosure or shown in the drawings. While the Examiner acknowledges that the claims had recited crimping and is mentioned in the disclosure, the Examiner requests where such support is as required by MPEP 714.02. The Examiner was simply noting that arguments focused on how the prior art was alleged not to teach crimping only the bulbous section, but failed to explain where this feature is shown and explained. Clearly, there is no criticality if Applicant cannot provide evidence of such support as required by MPEP 714.02. Additionally, Applicant appears to have overlooked the teachings of Liebig which the Examiner relied on for the claimed crimping feature in limited areas, i.e. the bulbous region.

Regarding the comments about the Koch reference, Applicant appears to have ignored or not understood the Examiner's interpretation of the claim in giving the broadest interpretation of where different patterns can be established. So Applicant understands, the Examiner notes the claims recite sections and portions which do not set forth any limits as to where patterns of material can be positioned, but only that the pattern exists in that portion or section as required by the claim. Thus a section can be said to have different patterns in the form of layers